Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Petition for Partial Relief From the Current Regulatory Treatment of COMSAT World Systems' Switched Voice, Private Line, and Video and Audio Services	)	R.M. No. 7913

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

COMMENTS OF ORION NETWORK SYSTEMS, INC.

Orion Network Systems, Inc. ("Orion"), by its undersigned counsel and pursuant to Section 1.45 of the rules of the Federal Communications Commission ("the Commission"), hereby submits its Comments on COMSAT World Systems' Petition for Partial Relief (the "Petition") regarding streamlined regulatory treatment of its switched voice, private line, and video and audio services.1/

I. Introduction and Preliminary Statement

Orion is the parent company of Orion Satellite Corporation, the general partner of Orion Atlantic, L.P. -- a separate systems satellite operator scheduled to launch its first trans-Atlantic satellite in October of this year. Accordingly, Orion has a vested interest in the Commission's regulatory treatment of COMSAT's trans-oceanic satellite services.

The Commission should deny COMSAT's Petition because of its continued dominant position in the trans-oceanic communications market and its participation in the INTELSAT system. Specifically, COMSAT's market share in relevant geographic

1/ These comments are timely filed pursuant to the Commission's Public Notice, DA 94-820, released July 26, 1994.

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markets and the lack of effective supply and demand elasticity in the marketplace provide COMSAT with market power to control prices and output in the satellite industry. Further, the competitive advantages currently enjoyed by COMSAT, which are of particular significance to new market entrants such as Orion who cannot obtain similar competitive advantages in a free market, include COMSAT's ability to cross-subsidize its competitive services from profits from its monopoly services, its special access to INTELSAT's orbital slots and its immunity from U.S. antitrust regulation in its INTELSAT Signatory capacity. Indeed, far from streamlining COMSAT's regulatory treatment, the Commission should increase its oversight until COMSAT is privatized and no longer enjoys special status as the U.S. INTELSAT Signatory.

II. Satellite Technology is the Preferred Medium for Video and Audio Services, Which Are Not Subject to Effective Competition

COMSAT's argument for streamlined regulatory treatment is premised on its self-funded study by Hendrik S. Houthakker and The Brattle Group (the "Study"). The Study segregated trans-oceanic facilities-based communications services into two separate service market segments: (1) transmission of trans-oceanic switched voice and private line services; and (2) transmission of trans-oceanic video and audio services. Study at 10-11. The Study examined the intermodal and intramodal competition facing COMSAT in each service market segment and in each relevant geographic market and concluded that "COMSAT faces substantial effective competition in all geographic and service market segments worldwide from fiber-optic cables and separate satellite systems." Petition at 3. The underlying facts presented in the Study, however do not warrant such a sweeping conclusion for all trans-oceanic communications services.

The trans-oceanic video and audio services market segment, unlike the switched voice and private line services market segment, is uniquely suited for satellite transmission and, therefore, satellites are the preferred medium for these types of services ("Satellite-Preferred Services"). For example, satellite communications are the medium of choice for any company that is in the business of distributing or collecting information, including broadcasters, cable companies and news organizations. Satellite communications are the only way to provide multi-point to point or point to multi-point services to collect data from many locations, or to widely distribute video services information to many locations. Other modes of communication, including fiber cables, are not viable marketplace alternatives because a ubiquitous, terrestrial broadband network (either landline or wireless) does not exist.

Corporate communications and advanced data networks constitute another example of the preferred status of satellite communications. These communications networks connect large numbers of remote locations for distribution or collection of information that cannot be transmitted easily via the PSTN. Given this, satellites are uniquely suited, and the most viable marketplace solution for, applications such as distance learning, high speed computer data communications and business television.

Finally, unlike land-based infrastructures, satellite communications do not have a "last mile problem." Although there may exist numerous trans-oceanic fiber cables, they only provide shore to shore communications. Once a fiber cable is terminated, it still must be connected to a wireline or domestic satellite network for the communication to reach its final destination.

The fundamental factual premise underlying COMSAT's conclusion that its market is sufficiently competitive so as to justify streamlining is the proliferation of trans-oceanic fiber cable throughout the world. But, as described above, there are certain types of services -- referred to as Satellite-Preferred Services -- for which fiber lines are not an adequate and, in most cases, not a feasible substitute. As to these services, the market is decidedly not competitive; COMSAT is clearly dominant, and any inroads that have been made thus far by Orion, PanAmSat and Columbia, are fledgling efforts at best. Whatever the competitive state of other portions of the overall market may be,[2/] it is clear that the market for international Satellite-Preferred Services is not sufficiently competitive, as demonstrated below.

III. Comsat Is Dominant in the Trans-Oceanic Satellite Service Market Segment

COMSAT's petition analyzes the same factors examined in the Commission's Competition in the Interexchange Marketplace proceeding, C.C. Docket No. 90-132, 6 FCC Rcd 5880 (released September 16, 1991) ("Interexchange Competition Order"), to conclude that its trans-oceanic communications are subject to

2/ By focusing its comments on the satellite mode of the international communications market, Orion does not concede that other aspects of the market are sufficiently competitive to justify, with respect to those other market segments, the relief requested by COMSAT.

substantial effective competition. In the Interexchange Competition Order, the Commission analyzed whether AT&T continued to exercise market power in the domestic interexchange marketplace and, therefore, continued to be dominant in the interexchange marketplace by examining five factors: demand elasticity; supply elasticity; pricing and market share data; AT&T's cost structure; and AT&T's size and resources. Analysis of COMSAT's position in terms of each of these five factors demonstrates that COMSAT and INTELSAT continue to maintain market power and, thus, can control output and pricing.

A. Low Demand Elasticity Increases COMSAT's Market Power

The Commission observed in its Interexchange Competition Order that sophisticated customers who are demand-elastic and who switch vendors for better prices or features tend to demonstrate a competitive market without a dominant competitor. As COMSAT noted in its Petition, most multi-national companies and television broadcasters in the video and audio market segment enter into long term arrangements which limit their ability to switch carriers when new separate satellite systems are operational, thus lowering the demand elasticities of Satellite-Preferred Services. Petition at 25.

Moreover, the high demand elasticity that COMSAT described in its Petition is drawn from the switched voice and private lines services market segment in which there are substitutes for satellite services, such as fiber optic cable. Id. at 26-29. There currently are few, if any, substitutes for video and audio services in the markets described above. Indeed, the Study showed, there are no existing or planned intermodal facilities in each of the three relevant geographic markets. Study at 78. Currently, COMSAT still maintains at least at 90 percent market share in the Trans-Atlantic and Trans-Pacific markets and at least a 60 percent share of the Caribbean and Latin American geographic markets. Id. at 70. Thus, the demand elasticity for trans-oceanic video and audio services is not highly elastic.

B. High Barriers to Entry Foreclose the Functioning of a Competitive Market

In the Interexchange Competition Order, the Commission relied on two criteria to determine supply elasticities in a marketplace -- first, whether existing competitors have significant additional supply capacity and, second, whether there are low barriers to enter the market. Order at 5888. If additional supply capacity is available and low entry barriers are in place, then no one competitor can exercise market power or the power to control price. As noted above, presently there are no meaningful substitutes for Satellite-Preferred Services; thus, COMSAT's reliance on the existence of fiber cables which provide switched voice and private line services have no bearing on the supply capacity of Satellite-Preferred Services.

Further, COMSAT has a great advantage over separate satellite systems because of its privileges and immunities which allow COMSAT special access, through INTELSAT, to the rapidly shrinking number of orbital slots. COMSAT can expand its own capacity at a far greater rate than its competitors -- thereby reducing the amount of capacity available for competitors. Indeed, INTELSAT recently has increased the pace of its filing for the remaining orbital slots. Thus, while Orion and others are attempting to launch their first satellites to expand the supply of satellite transmission capacity for video and audio services, COMSAT also is expanding its supply, but at a greater rate, thereby increasing its advantage and dominant position.

Similarly, while Orion and others recently have begun to enter the market, the barriers to entry are much lower for COMSAT to expand its capacity than for COMSAT's competitors to enter the market and increase total supply capacity. The capital intensive nature of satellite communications, which requires capital investments of hundreds of millions of dollars per satellite, is ample testimony to the high barriers that confront new entrants.

These entry barriers are magnified even further by Article XIV(d) of the INTELSAT Agreement. Article XIV(d) prevents a competitive satellite from providing service until its satisfies INTELSAT that it will cause neither technical nor economic harm to INTELSAT. This consultation process, even in its "reformed" state, is time consuming, expensive and requires that sensitive business and technical information be revealed to COMSAT. Thus, not only are the barriers to entry substantial for new entrants, COMSAT maintains key competitive advantages given its INTELSAT Signatory capacity -- advantages new entrants will never enjoy.

C. <u>COMSAT's Has the Market Share of a Dominant Carrier</u>

COMSAT's market share, as mentioned above, is inconsistent with a competitive market. As its own Study indicated, COMSAT's market share of utilized capacity for trans-oceanic video and audio services is 90 percent or more in the Trans-Atlantic and Trans-Pacific regions and greater than 60 percent for the Caribbean and Latin American markets. <u>Study</u> at 70. The extent of COMSAT's market shares in the Trans-Atlantic and Trans-Pacific regions have traditionally been viewed as evidence of monopoly power. See, Kodak v. Image Technical Services, 119 L Ed 2d 265, 293 (1992) (80% market share, with no readily available substitutes, is a monopoly); United States v. Grinnel Corp., 86 S. Ct. 1698 (1966) (87% of the market is a monopoly); American Tobacco Co. v. United States, 66 S.Ct. 1125 (1946) (over two-thirds of the market is a monopoly). Given the disproportionate market share COMSAT enjoys compared to private satellite operators, COMSAT still maintains a dominant position in the international video and audio service market segment.

D. COMSAT Has Substantial Cost Structure Benefits

COMSAT enjoys a substantial advantage in the financial markets. Because of INTELSAT's privileges, COMSAT can borrow money at lower rates than its competitors. For example, COMSAT can, in effect, borrow money for satellite construction projects using INTELSAT's triple-A rating, which reflects INTELSAT's quasi-governmental status. Such a high rating enables INTELSAT, and COMSAT, to borrow money at far lower interest rates, up to five percentage points, than its competitors -- bestowing an enormous competitive advantage upon COMSAT that no other separate satellite system could ever obtain.

COMSAT also takes advantage of INTELSAT privileges which include the ability to cross-subsidize commercial offerings with monopoly revenues, and operate free from antitrust scrutiny for all of INTELSAT's activities and COMSAT's Signatory activities. For example, INTELSAT has the ability to practice predatory pricing as evidenced by its most recent offer of six months free service upon execution of certain space segment orders -- an offer almost impossible to match for new satellite entrants. All of these special privileges lower COMSAT's costs and give it a competitive advantage over separate satellite systems.

Moreover, COMSAT can avoid Commission regulation by hiding facility construction and ratemaking activities behind the INTELSAT veil, a veil the Commission has not pierced because INTELSAT is an international treaty organization is beyond the Commission's regulatory jurisdiction. Because the INTELSAT portion of COMSAT's tariffs have not been subject to regulatory review or oversight, COMSAT is able to cross-subsidize between its competitive and monopoly services without effective Commission regulation or the threat of antitrust liability. In sum, these cost structure benefits bestow a competitive advantage on COMSAT that Orion and others do not have.

E. COMSAT's Size and Resources Preclude Effective Functioning of the Competitive Video and Audio Services Market Segment

COMSAT dwarfs the size of its competitors in the international video and audio services market. For example, Orion has yet to launch its first satellite, while COMSAT has been in existence for three decades and has access to INTELSAT's entire network of satellites. Orion, PanAmSat and Columbia are but a fraction of the size of COMSAT which possesses total assets of $1.6 billion and had total revenues last year of $640 million. Petition at 32. COMSAT is by far the largest competitor in the Satellite-Preferred Services market. Thus, by the Commission's fifth measure of effective competition, COMSAT must be deemed to be dominant in the relevant market for international satellite services.

IV. Conclusion

COMSAT still maintains a dominant position in the international satellite video and audio services market segment. COMSAT's high market share in relevant geographic markets, coupled with the lack of effective demand and supply elasticity, give COMSAT market power with which to control market prices and supply. COMSAT enjoys special privileges and immunities as INTELSAT's Signatory which bestow competitive advantages upon COMSAT which separate satellite systems can never obtain.

Given these considerations, far from streamlining COMSAT's regulatory treatment, the Commission should increase its regulatory oversight until COMSAT is privatized and no longer enjoys its special status as an INTELSAT Signatory. As a consequence of all of these factors, COMSAT's tariff offerings, at a minimum, must continue to receive full regulatory scrutiny and COMSAT's Petition should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bridget Y. Monroe, hereby certify that on this 25th day of August, 1994, a copy of the foregoing "Comments of Orion Satellite Corporation" was hand-delivered to the following parties:

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